

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

<b>INDEPENDENT INVESTORS, LLC,</b>	)	
<b>Defendant Below/Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>C.A. No. CPU4-11-003143</b>
	)	
<b>MELISSA ROTSIDES,</b>	)	
<b>KELLY MCPARTLAND,</b>	)	
<b>LAUREN DECONDIA,</b>	)	
<b>AMANDA SOLGE, and</b>	)	
<b>LAUREN GRANEY,</b>	)	
<b>Plaintiffs Below/Appellees</b>	)	

Submitted: December 16, 2011

Decided: December 16, 2011

On Plaintiff Below/Appellees' Motion to Dismiss  
**GRANTED**

**ORDER**

Melissa Rotsides, 22 Cliff Court, Succasunna, New Jersey 07876.  
*Plaintiff Below/Appellee*

Kelly McPartland, P.O. Box 262, Highland Mills, New York 10930.  
*Plaintiff Below/Appellee*

Lauren DeCondia, 11 Brinkerhoff Street, Ridgefield Park, New Jersey 07660.  
*Plaintiff Below/Appellee*

Amanda Solge, 25 Homewood Road, Wilmington, Delaware 19803.  
*Plaintiff Below/Appellee*

Lauren Graney, 10769 Glen Hannah Dr., Laurel, Maryland 20723.  
*Plaintiff Below/Appellee*

Michael P. Morton, Esq., 1203 North Orange Street, Wilmington, Delaware 19801.  
*Attorney for Defendant Below/Appellant.*

**ROCANELLI, J.**

This matter is before the Court on appeal from the Justice of the Peace Court. On May 3, 2011, the Justice of the Peace Court entered judgment in favor of Plaintiffs Below/Appellees. For the reasons set forth below, the Motion to Dismiss Appeal by Plaintiffs Below/Appellees is GRANTED.

### **FINDINGS**

1. Pursuant to statute, a final order of the Justice of the Court can be appealed to the Court of Common Pleas, provided that the notice of appeal is filed in the Court of Common Pleas within fifteen (15) days of the date of the order of the Justice of the Peace Court. 10 Del. C. Sec. 9571(b). *See also* Court of Common Pleas Civil Rule 72.3(b). Decisional law consistently holds that the 15-day filing deadline is jurisdictional.

2. In this case, the Justice of the Peace Court entered a final Order on May 3, 2011. Accordingly, the deadline for Defendant Below/Appellant to file a Notice of Appeal from the May 3, 2011 Justice of the Peace Court Order expired on May 18, 2011.

3. The Court's docket indicates that Defendant Below/Appellant filed a Notice of Appeal in the Court of Common Pleas on May 24, 2011.

4. On October 7, 2011, Plaintiffs Below/Appellees filed a Motion to Dismiss the Appeal on the grounds that the appeal was not timely filed, because it was filed on May 24, 2011, outside the 15-day jurisdictional deadline ("Motion to Dismiss Appeal").

5. Defendant Below/Appellant did not file a response to the Motion to Dismiss Appeal.

6. On December 16, 2011, the Court heard oral argument on the Motion to Dismiss Appeal.

At the hearing, Defendant Below/Appellant argued that the Notice of Appeal was in fact filed on May 16, 2011. However, Defendant Below/Appellant did not present competent evidence to establish that Defendant Below/Appellant met the jurisdictional deadline.

The only piece of evidence presented by Defendant Below/Appellant was a document printed from the Court's e-flex filing system that provides as follows:

This filing is not being processed and added to the Clerk of Court repository. Once ECF has stored the documents associated with your filing, a receipt will be issued to you. You may view the status of this filing, and access your receipt for 60 days, after which it will be purged from this system. The documents will be retained and available long term through the Clerk of Court.

This document reflects a print date of May 16, 2011. However, this document does not specifically refer to this case by caption or case number. There was no competent evidence presented on which the Court could conclude that this document was generated by the Court's system for the specific case before the court today. Counsel conceded, for example, that he himself did not e-file the notice of appeal and therefore could not testify regarding the May 16 document, except to state it was in his file.

Defendant Below/Appellant requested the opportunity to call witnesses from the Court's staff. Defendant Below/Appellant also requested that court staff provide factual research on its behalf. However, these witnesses had not been subpoenaed and Defendant Below/Appellant had not provided any notice to the Court that he intended to call any court staff as witnesses and/or that he intended to ask staff to perform factual research for counsel.

Counsel for Defendant Below/Appellant contended that a member of his staff could be made available to testify later in the day on December 16, 2011. However, the Court declined counsel's request to adjourn and hear evidence later in the day. As noted, Plaintiffs Below/Appellees filed the Motion to Dismiss Appeal on October 7, 2011, more than two months ago. Defendant Below/Appellant did not file a response to the Motion to Dismiss. Based on the proffer made by Defendant Below/Appellant and arguments by Plaintiffs Below/Appellees, the Court declined to hear testimony by a witness under the circumstances presented.

Finally, and most importantly, on October 12, 2011, Defendant Below/Appellant filed a Motion to Dismiss the Complaint on Appeal. Defendant Below/Appellant's own submission to the Court, at paragraph 1, states: “[o]n **May 24, 2011 Defendant Below, Appellant electronically filed a Notice of Appeal, Praecipe, and Summons requesting service by the New Castle County Sherriff.**” (Emphasis added.) The Court specifically rejects the argument presented by Defendant Below/Appellant that its own motion contained an error and did not accurately reflect the earlier date of filing of the notice of the appeal.

### CONCLUSION

**For the reasons stated, the Court concludes that the Notice of Appeal was filed by Defendant Below/Appellant on May 24, 2011, after the jurisdictional deadline had passed.**

**ORDER**

**AND NOW, THEREFORE, IT IS HEREBY ORDERED** this 16<sup>th</sup> day of December 2011, the Notice of Appeal filed on May 24, 2011 was not timely; the Motion to Dismiss filed by Plaintiffs Below/Appellees is hereby **GRANTED**; and this case is **DISMISSED** for want of jurisdiction over the appeal.

*Andrea L. Rocanelli*

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The Honorable Andrea L. Rocanelli